

HOUSE No. 3533

By Mr. Kaufman of Lexington, petition of Jay R. Kaufman and others relative to prohibiting the investment of certain public funds in companies doing business in Sudan. Transportation.

The Commonwealth of Massachusetts

PETITION OF:

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Martha M. Walz	Bradley H. Jones, Jr.
Todd M. Smola	Cleon H. Turner
Bruce E. Tarr	Carl M. Sciortino, Jr.
Frank I. Smizik	Louis L. Kafka
Ruth B. Balser	Vincent A. Pedone
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Ellen Story	Elizabeth A. Malia
Byron Rushing	Marie P. St. Fleur
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Gloria L. Fox	James B. Eldridge
Rachel Kaprielian	Denise Provost
Geoffrey D. Hall	Christopher N. Speranzo
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In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE PROHIBITION OF INVESTMENT OF CERTAIN PUBLIC FUND IN COMPANIES DOING BUSINESS IN SUDAN.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 32 section 2A of the General Laws is
2 hereby amended by adding the following new subsection (k):—
3 a) The assets of any pension or annuity fund under the jurisdiction
4 of the treasurer and receiver general of the Commonwealth shall not
5 be invested in companies (“targeted companies”) which either
6 directly or through an affiliated instrumentality meet the following
7 criteria:—
8 i) Provide revenues to the Sudanese government through business
9 with the government, government-owned companies or government-
10 controlled consortiums.

11 ii) Offer little substantive benefit to those outside of the Sudanese
12 government or its affiliated supporters in Khartoum, Northern Sudan
13 and the Nile River Valley; this “outside” population specifically
14 includes the country’s disaffected Eastern, Southern, and Western
15 regions.

16 iii) Have either demonstrated complicity in the Darfur genocide
17 or have not taken any substantial action to halt the genocide. Sub-
18 stantial action shall include but is not limited to curtailment of oper-
19 ations or public pressure on the Sudanese government. Simple
20 company statements shall not constitute evidence of substantial
21 action.

22 (b) Companies providing military equipment, arms, or defense
23 supplies to any domestic party in Sudan, including the Sudanese
24 government and rebels, shall automatically be targeted for divest-
25 ment. A strong presumption shall also be made against any company
26 providing any domestic party in Sudan with equipment that may be
27 readily co-opted for military use, including radar systems and mili-
28 tary-grade transport vehicles, unless that company has implemented
29 safeguards against such co-option.

30 (c) Companies which, either directly or through an affiliated
31 instrumentality, provide services clearly dedicated to social develop-
32 ment for the whole country shall be excluded from divestment. Such
33 entities include, but are not limited to those providing medicine and
34 medical equipment, agricultural supplies and agricultural infrastruc-
35 ture, educational opportunities, journalism-related activities, and
36 general consumer goods.

37 (d) Companies whose operations in Sudan are dormant but who
38 do have an equity share in or with the country shall be engaged in an
39 ongoing dialogue of concern with the fiduciaries. Such companies
40 shall not be targeted for divestment until such time as their opera-
41 tions become active and they fulfill the criteria in subsections (a)-(c).

42 (e) The following types of investments shall be subject to divest-
43 ment:—

44 i) Direct holdings of public equity, corporate bonds, and Sudanese
45 government-issued bonds.

46 a.) Direct investments shall be defined as holdings directly man-
47 aged by the fiduciaries mentioned in this bill and all holdings admin-
48 istered by a contracted manager in separately managed accounts,

49 including both actively-managed and passively-managed/indexed
50 funds.

51 ii) Holdings of public equity, corporate bonds, and Sudanese-gov-
52 ernment-issued bonds in commingled accounts that are passively-
53 managed/indexed. Actively-managed, commingled accounts, for
54 both public equity and qualified fixed-income investments, will be
55 excluded from immediate divestment. Such accounts are still cov-
56 ered under section 1f of this bill.

57 iii) Private equity holdings with readily identifiable ties to Sudan.

58 a.) “Readily identifiable” is left to the good faith judgment of the
59 fiduciaries mentioned in this bill.

60 (f) The Treasurer, or his designates, shall submit letters to con-
61 tracted managers of actively-managed, commingled accounts
62 requesting that the manager consider creating an actively-managed,
63 commingled account devoid of companies targeted as a result of this
64 bill. In the event of such an introduction, the fiduciaries shall
65 transfer all assets in actively-managed, commingled accounts into
66 the newly available, Sudan-free accounts in an expedited timeframe
67 still consistent with the fiduciaries’ prudent investor obligations.

68 (g) The list of targeted companies shall be determined by submit-
69 ting the criteria in section 1a-d to a reputable and non-biased third-
70 party research firm, such as, but not limited to, the Institutional
71 Shareholder Services, Inc. or KLD Research & Analytics. Such a list
72 may require modifications as circumstances in Sudan evolve.

73 (h) Research attained through the process outlined in Section 1g
74 must, when possible, be supplemented by publicly available
75 research, communication with potentially targeted companies, and
76 communication with states and institutions that have already
77 divested.

78 (i) Reasons for eliminating or adding a company to a preliminary
79 list of identified companies based on the process outlined in Section
80 1g must be justified in writing and supported by available research.

81 (j) The treasurer or his designates, shall take appropriate action to
82 sell, redeem, divest or withdraw any investment held in violation of
83 this act within one year of the effective date of the act.

84 (k) Annually the treasurer shall report on all investments sold,
85 redeemed, divested or withdrawn in compliance with this section as
86 well as any companies that the fiduciary is engaged with under sub-
87 section (d).

88 (l) If it is determined by the treasurer or his designates, that a
89 company, which had previously been a targeted company, has ceased
90 business operations with Sudan or its instrumentalities, then subsection
91 (j) shall no longer apply to that company. Reasons for addition
92 or subtraction of a company from divestment or engagement shall be
93 made clear in the report described in subsection (k).

94 (m) In the event that the government of Sudan sufficiently halts
95 the ongoing genocide in Darfur for at least 12 months, as determined
96 jointly by the State Department and Congress of the United States,
97 the provisions of this bill shall expire.

98 (n) In the event that the United States revokes its current sanctions
99 on the Sudan, the provisions of this bill shall expire.

1 SECTION 2. Nothing in this act shall alter or diminish existing
2 fiduciary or statutory obligations and other terms, conditions, and
3 limitations on the investment of retirement system assets for the
4 exclusive interest and benefit of participants and beneficiaries of a
5 retirement system.